Conflicts of Interest

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References

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18 U.S.C. 201, 202, 203, 205, 206, 207, 208, 209

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5 C.F.R. 2635, Subparts D, E, F

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5 C.F.R. 2640

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DoD 5500.7-R
Chapters 2 & 5

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www.oge.gov

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www.defenselink.mil /

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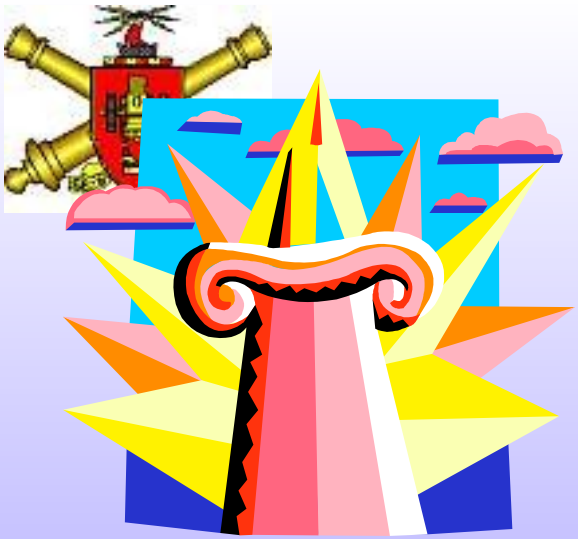

Background

- Applies to Executive Branch Employees
- Purpose: Maintain Public Trust & Confidence

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General Principle

Federal employees may not take official action in matters in which they have a personal interest

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"Conflict of Interest"

A personal interest or relationship, as defined by law or regulation, that conflicts with the faithful performance of official duty

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- The Primary Conflicts of Interest Statute

- What the Statute Says

- What the Statute Means

- Definitions

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An employee is prohibited from
participating personally & substantially
in an official capacity in any
particular matter
in which, to his knowledge, he or any person
whose interests are imputed to him under
this statute has a
financial interest,
if the particular matter will have a
direct & predictable
effect on that interest

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“Particular Matter”

A particular matter is one that is focused upon the interests of specific persons, or a discrete & identifiable class of persons.

It does not extend to broad policy options or considerations directed toward the interest of a large & diverse group of personnel

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Participate Personally & Substantially

- **Participate**
  decision, approval, recommendation, investigation or rendering advice
- **Personally**
  directly, & includes the participation of subordinate when actually directed by Government employee
- **Substantially**
  of significance to the matter

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Financial Interest

A financial interest is any current or contingent ownership, equity, or security interest in real or personal property or a business.

It does not include future interest.

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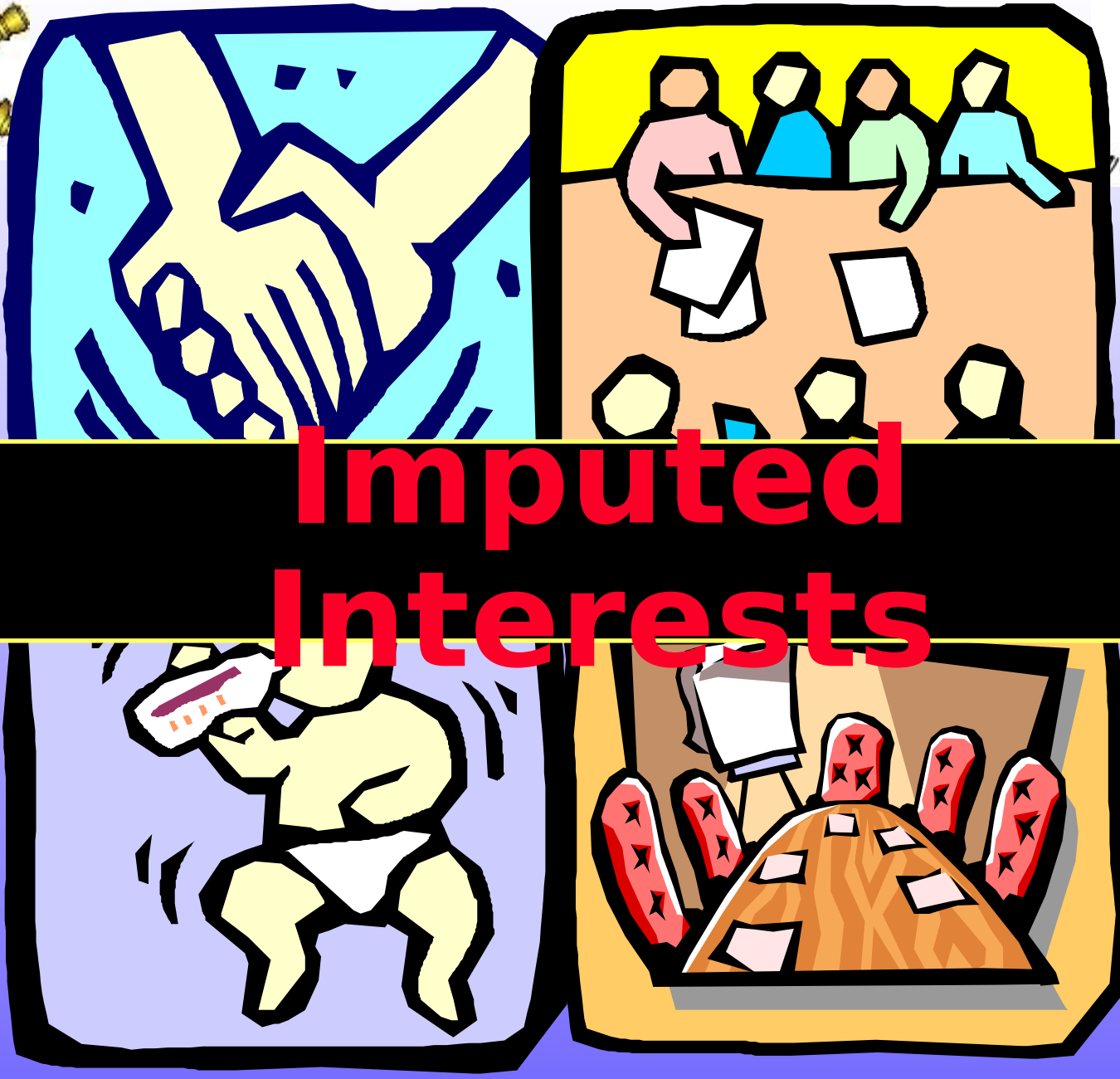
TEST

Is there a real possibility that the Federal employee may gain or lose as a result of developments in or resolution of the matter?



Imputed Interests

Victory thru Justice!

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Spouse

Victory thru Justice!

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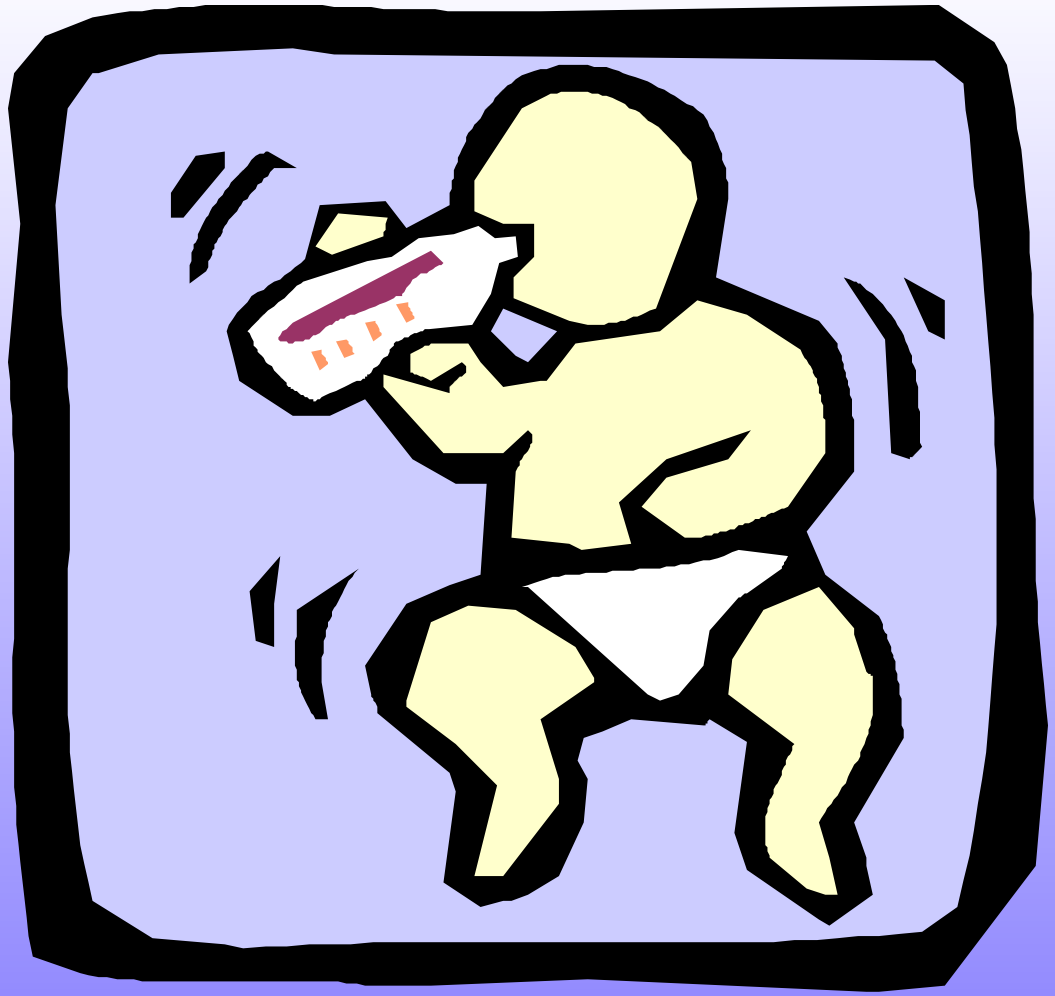

Minor children

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An organization in which the employee serves as officer, etc.

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An organization with whom the employee is negotiating for employment

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Direct & Predictable Effect

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- **Direct**:

  A close causal link between any decision or action in the matter & any expected effect of the matter on the financial interest

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Direct & Predictable Effect

Victory thru Justice!

- **Predictable**:

  a real, as opposed to speculative possibility that the matter will affect the financial interest (magnitude of gain is immaterial)

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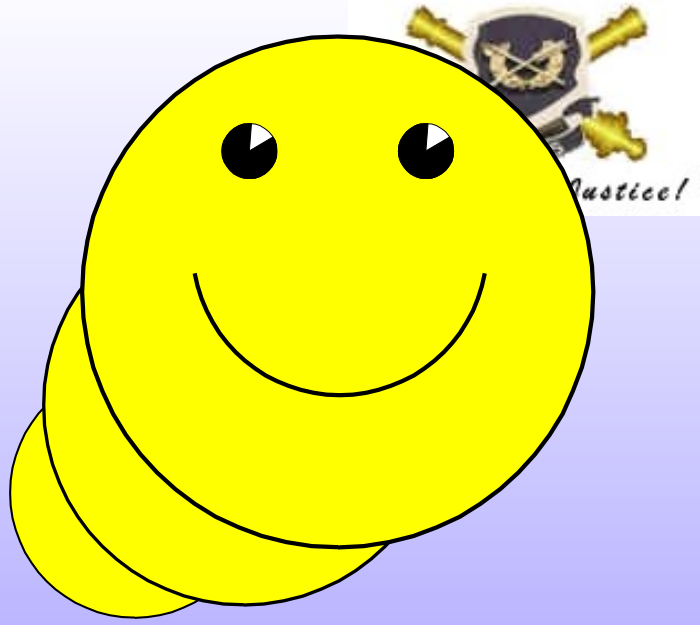
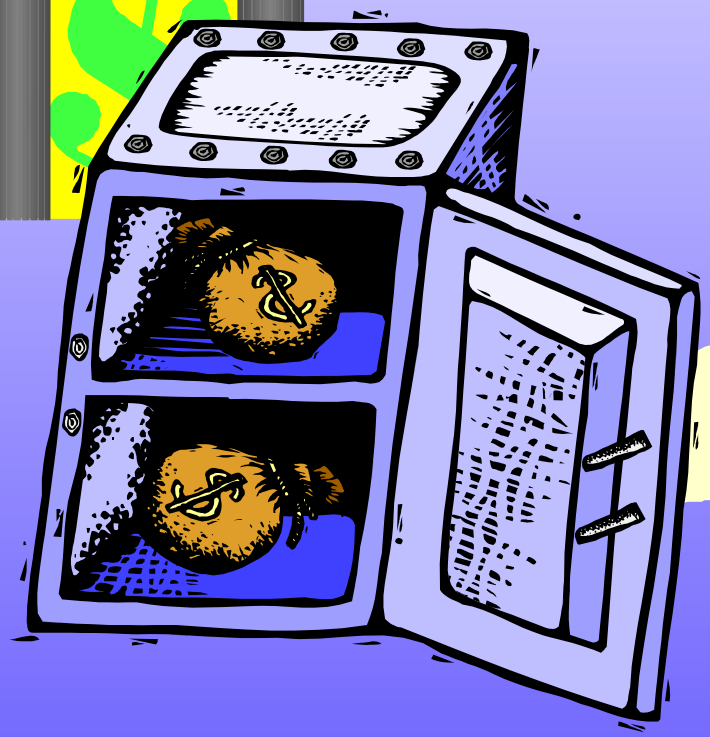
Resolution of a Conflict of Interest



- Disqualification
- Reassignment
- Change of Duties
- Divestiture of the Financial Interest
- Regulatory Exemptions
- Individual Waiver
- Waiver for Special Govt Employees

Regulatory Exemptions



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Pooled Investments

- Diversified Mutual Funds
- Sector Mutual Funds
- Employee Benefit Plans

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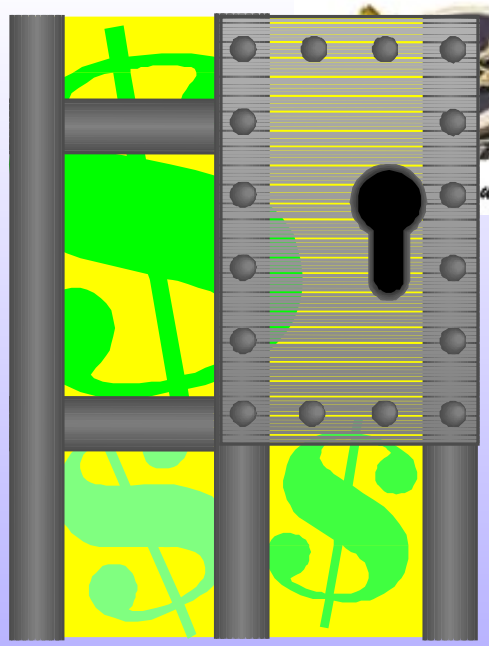
Securities



- De Minimis
- Short Term Federal Securities
- Securities Owned by Tax Exempt Orgs.
- General Partners

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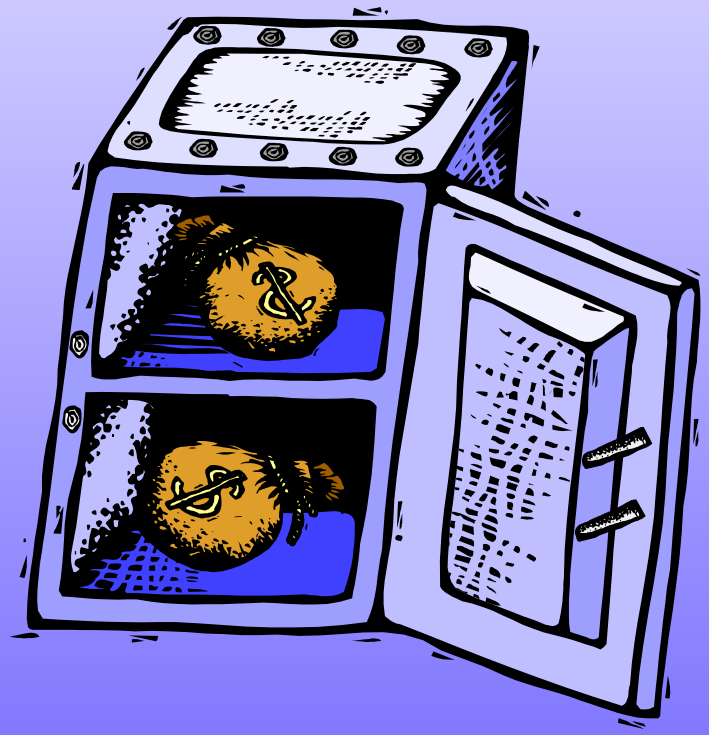
Misc



- Hiring Decisions
- Leave of Absence
- Multi-Campus Inst.
- Official Duties
- Commercial Discounts
- Mutual Insurance Co.
- Special Govt. E-ees
- Federal Reserve Dir.
- Medical Products

Victory thru Justice!

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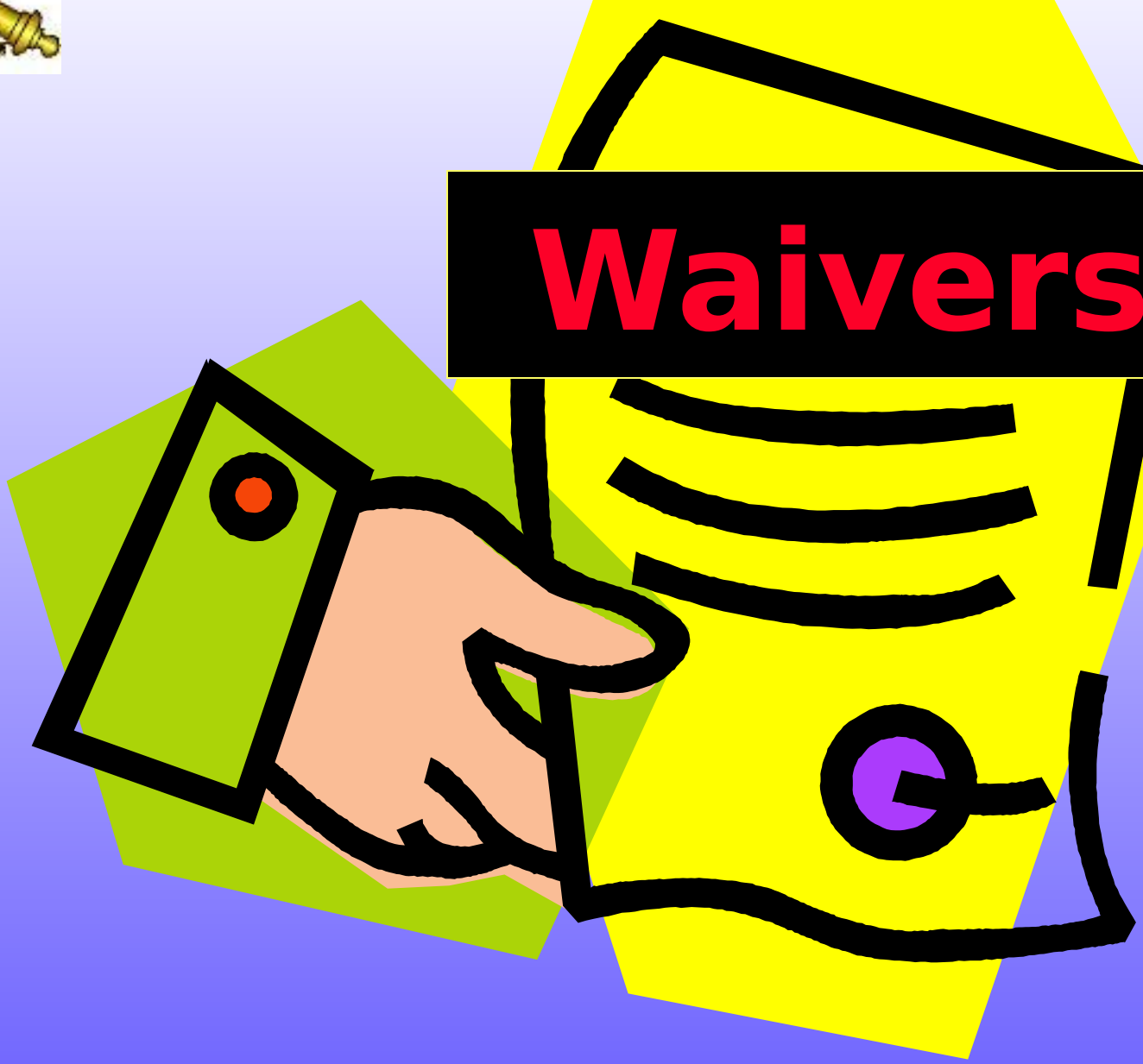
Waivers



Victory thru Justice!

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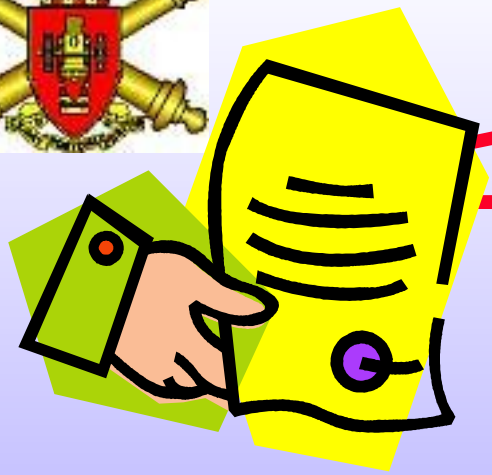

18 U.S.C. 208 (b) (1): Individual Waiver

Individual Waiver

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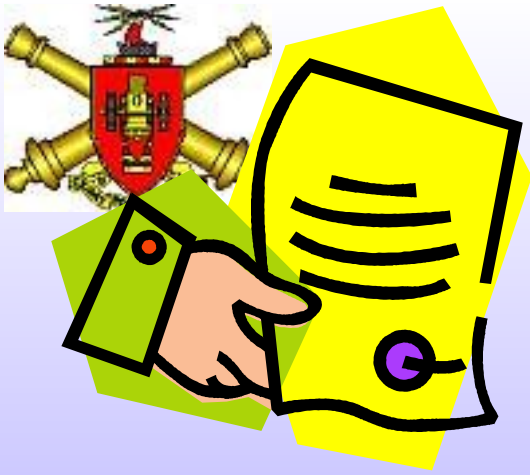
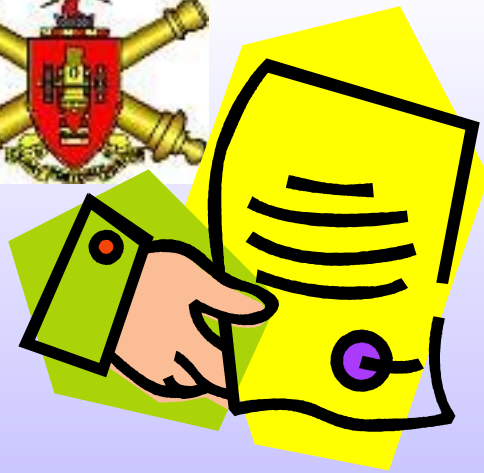


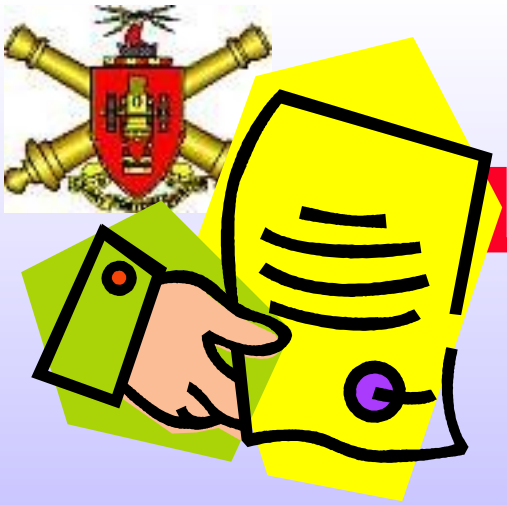
18 U.S.C. 208 (b) (1): Requirements

- Full disclosure
- Issued in writing
- Describe the interest, the matter, e-ees role, & limitations on employee's ability to act



18 U.S.C. 208 (b) (1): Factors

- The type of interest that is creating the disqualification
- The identity of the person / relationship
- The dollar value of the disqualifying financial interest



18 U.S.C. 208 (b)(1): Factors

- Value in relation to individual's total assets
- Nature & importance of employee's role
- Other factors
- Need to consult with OGE when practicable

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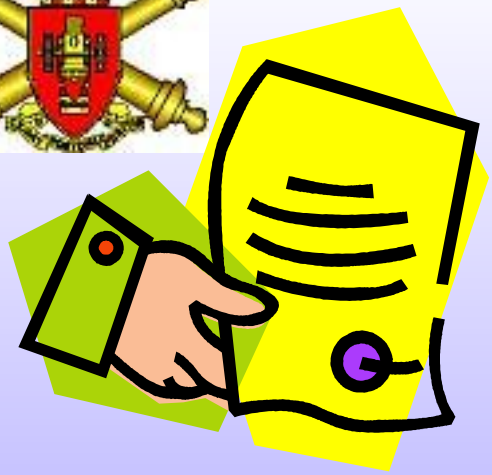

18 U.S.C. 208 (b) (3): Application

Applies to Special Government Employees who serve on advisory committees

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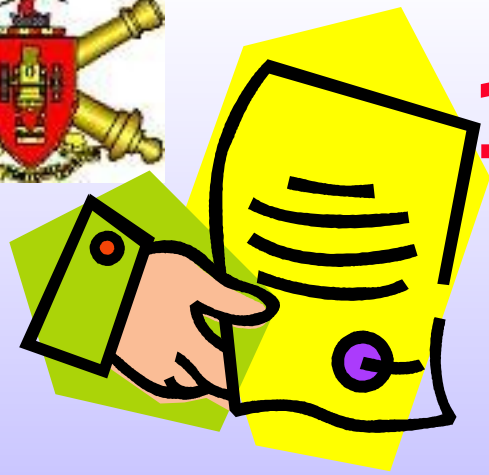

18 U.S.C. 208 (b) (3): Requirements

- Advisory committee must be a FACA
- Waiver issued in writing by appointing official
- Need for individual must outweigh conflict
- Facts must be fully described in the waiver

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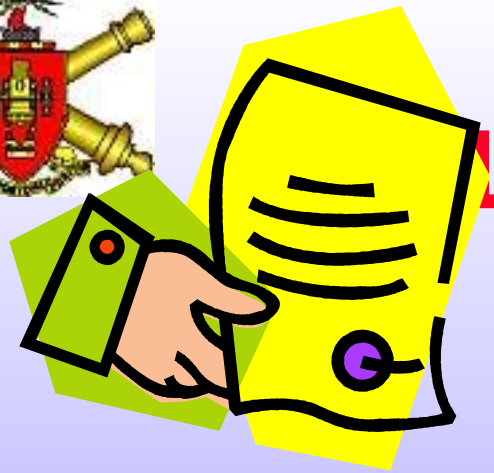
18 U.S.C. 208 (b) (3): Requirements

- Waiver should describe limitations on employee
- Waiver must be issued prior to taking action
- Waiver may apply to present & future financial interest



18 U.S.C. 208 (b) (3): Factors to Consider

- Type of interest that creates disqualification
- Identity of person whose interest is involved
- Uniqueness of individual's qualifications
- Dollar value of disqualifying financial interest

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18 U.S.C. 208 (b) (3): Factors to Consider

- Value of the financial instrument involved
- Extent to which disqualifying financial interest will be affected
- Need to consult with OGE

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Appearances

Victory thru Justice!

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Goals

- Identify circumstances that raise most significant appearance problems
- Decide when employee is required to determine whether impartiality could be questioned
- Decide when an agency may make an independent determination of impartiality
- Determine when employee is required to obtain agency authorization before participating

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5 C.F.R. 2635.502

Situations when 208 does not bar participation, but when an employee should consider whether circumstances would cause a reasonable person to question his impartiality if he participated in a particular matter

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Circumstance #1

- A particular matter involving specific parties,
- is likely to have a direct and predictable effect,
- on the financial interest of a member of his household

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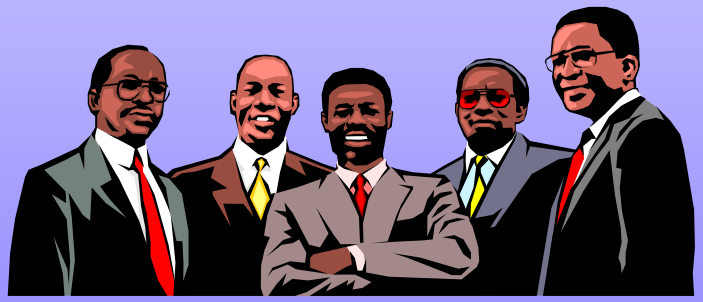
Circumstance #2

- A person with whom he has a “covered relationship”
- Is or represents a party to,
- A particular matter involving specific parties



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Covered Relationships

- Members of household
- Relatives (close personal relationship)
- Persons, organizations, entities, that:
  - Have or seek some business relationship
  - Spouse, parent or dep. child seeking employment
  - Employee served as officer, director, trustee, employee, partner in last year
  - Employee is “active participant”

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Catch-All's: Number 1

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An employee who is concerned that circumstances other than those described would raise a question regarding his impartiality should use this process

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Catch-All's: Number 2

An employee whose duties affect the financial interests of a friend, relative, etc., shall comply with this process

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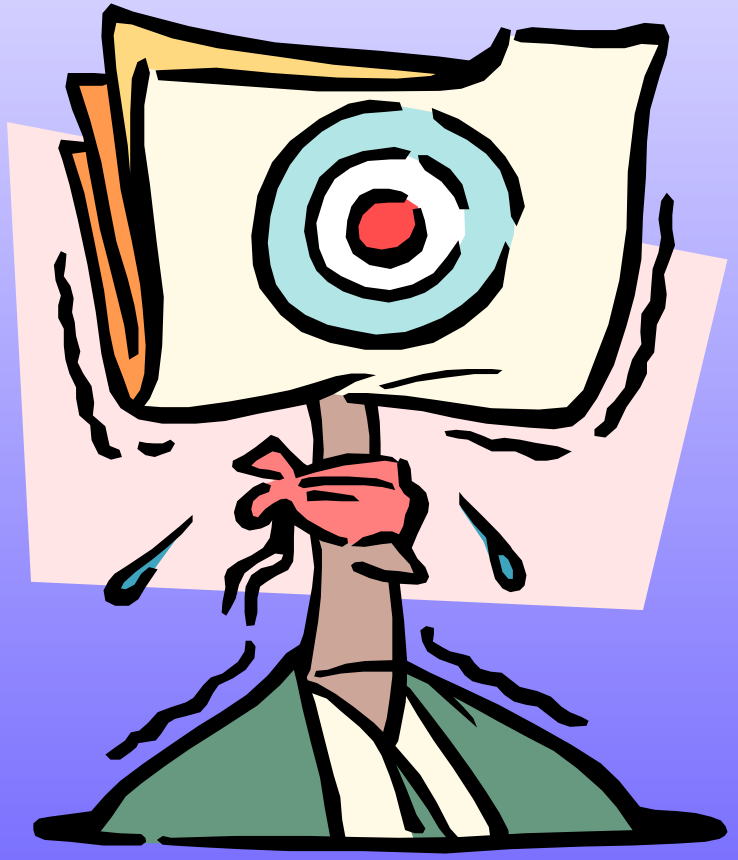
Determination

- Would the circumstances cause a reasonable person with knowledge of the relevant facts to question my impartiality?



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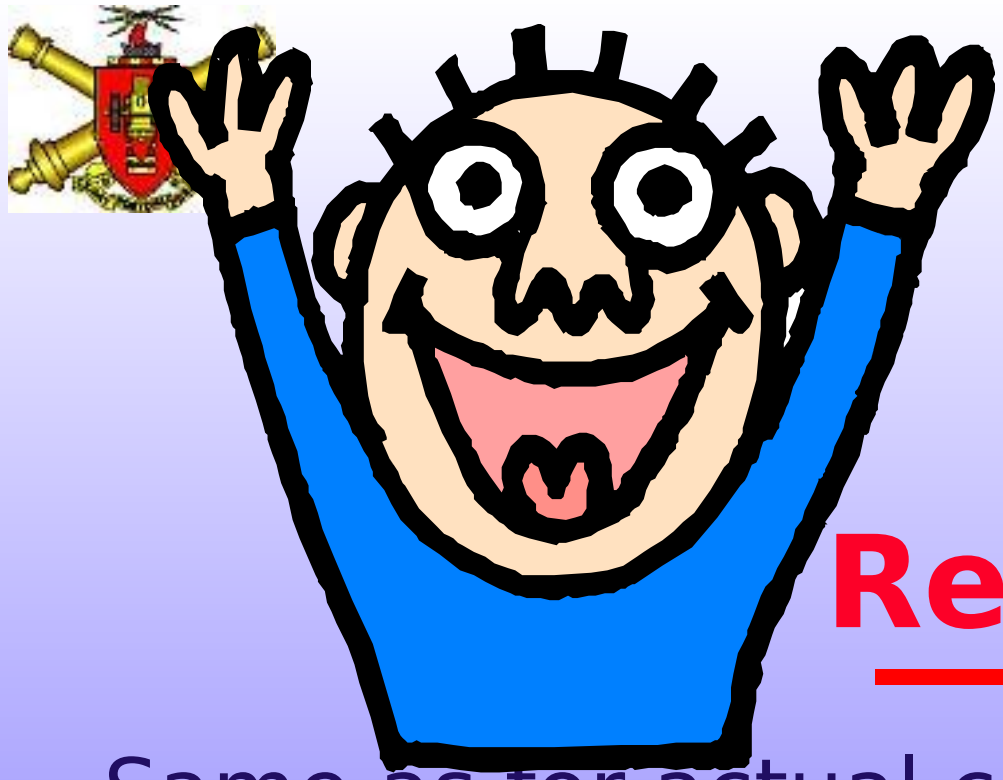

Resolution

Same as for actual conflict situations, plus authorization by agency designee that employee's participation outweighs concerns over impartiality

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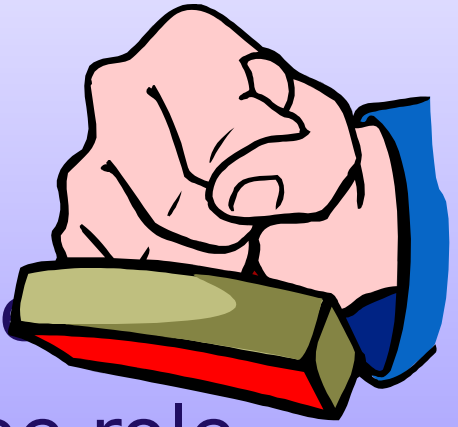
Agency Authorization
5 C.F.R 2635.502(d)



- Nature of relationship
- Effect on person's financial interest
- Nature & importance of employee role
- Sensitivity of the matter
- Difficulty of reassigning the matter
- Adjustments to employee's duties

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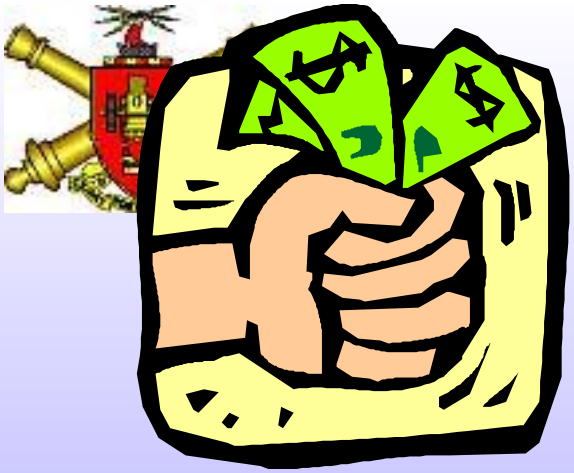

Extraordinary Payments from Former Employer

- Disqualified for 2 years
- Extraordinary if value is greater than $10,000 & not part of standard benefits plan
- Waiver of disqualification by agency head

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Other Statutes

Victory thru Justice!

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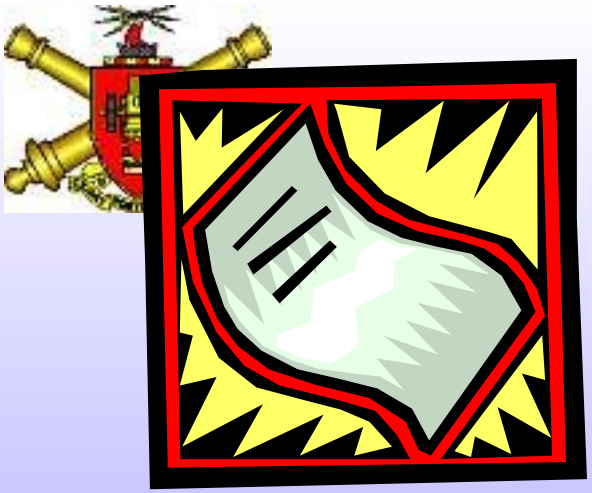

Bribery: 18 U.S.C. 201

Crime to corruptly give, offer or promise anything of value directly or indirectly to a public official with intent to influence any official act or the commission of fraud

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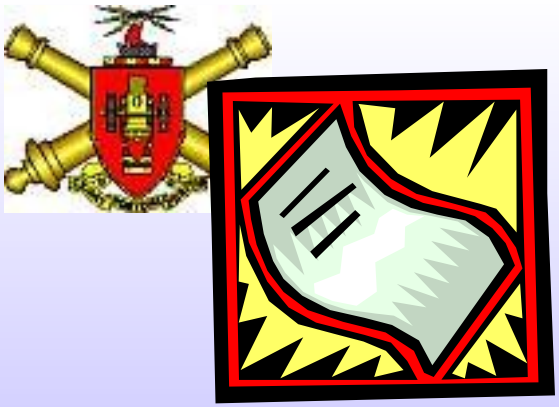

Bribery: 18 U.S.C. 201

Public Official Can Include Those Who Are Not Federal Employees

- Includes enlisted personnel
- Includes support contractors

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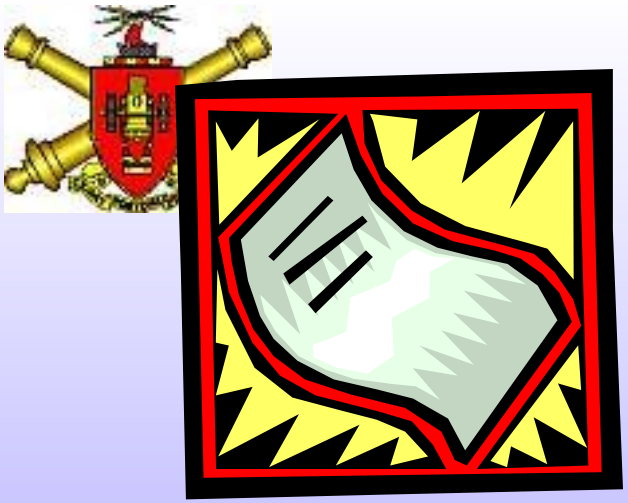

Bribery Elements

- Offender acted “corruptly” (“willfully”)
- Offender acted with intent to influence
  - Actual or intended quid pro quo

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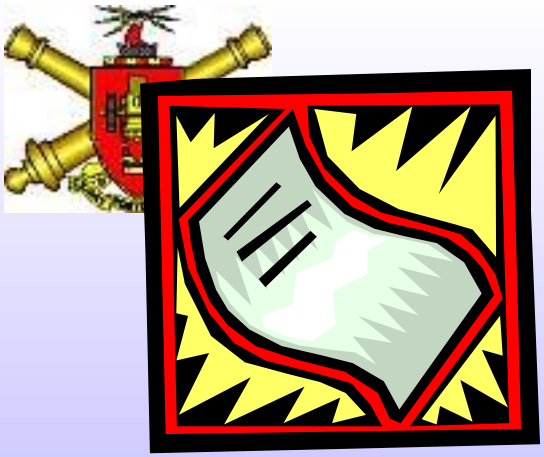

Lesser Included Offense -- Unlawful Gratuities 18 U.S.C. 201(c)

- Varying degrees of same conduct
- Primary difference between bribes & gratuities - intent to influence
- 1989 Ethics Reform Act gave OGE authority to define exceptions
- See U.S. v. Sun-Diamond Growers of California

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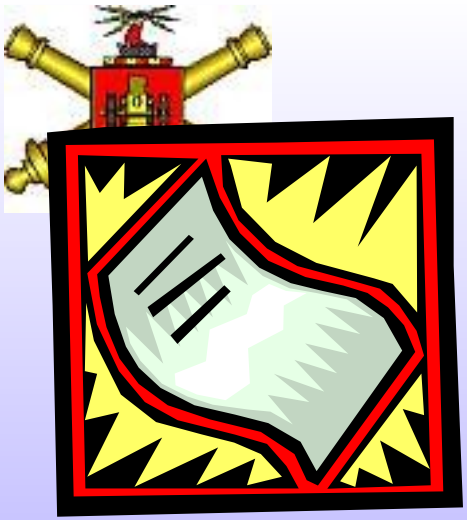

18 U.S.C. 203 Prohibition Against Private Compensation for Services Before Govt Agencies

Officers or employees may not demand, seek or receive compensation for any representational services . . .

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- In relation to a particular matter
- In which the U.S. is a party or has a direct & substantial interest
- Exceptions: SGEs, executors, retirees

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18 U.S.C. 205 Prohibitions Against Representing Others in Claims Against & in Other Matters Affecting the U.S.

- Includes virtually any matter
- Exceptions . . .

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- SGEs
- Federal personnel matters
- Fiduciaries of family members or estates
- Statements under oath
- Non-profit organizations if majority of members are current officers or employees of US or DC

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Other Statutes
18 U.S.C. 207

Post-Government Employment Restrictions

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18 U.S.C. 209
Improper Supplementation of Salary

Govt officials will tend to show favoritism to their paymasters even in the absence of any specific quid pro quo

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Other Statutes
18 U.S.C. 209
Improper Supplementation of Salary

Must demonstrate that the payment was made specifically for the officer or employee's services as such an offer or employee

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Other Statutes
18 U.S.C. 209
Improper Supplementation of Salary

Recurring issue:

Payments to new Federal employees by former private employers

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41 U.S.C. 423
The Procurement Integrity Act

If an agency official ... participating personally & substantially in a ... procurement for a contract in excess or the simplified acquisition threshold contacts or is contacted by ... a bidder or offeror ... regarding possible non-Federal employment, the official shall . . .

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- Report the contact in writing
- Reject possibility of employment
- Disqualify himself from further participation

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41 U.S.C. 423 The Procurement Integrity Act

- If a Federal official intends to make a contact, he must submit written notice of disqualification to:
  - HCA
  - Source Selection Authority
  - Contracting Officer

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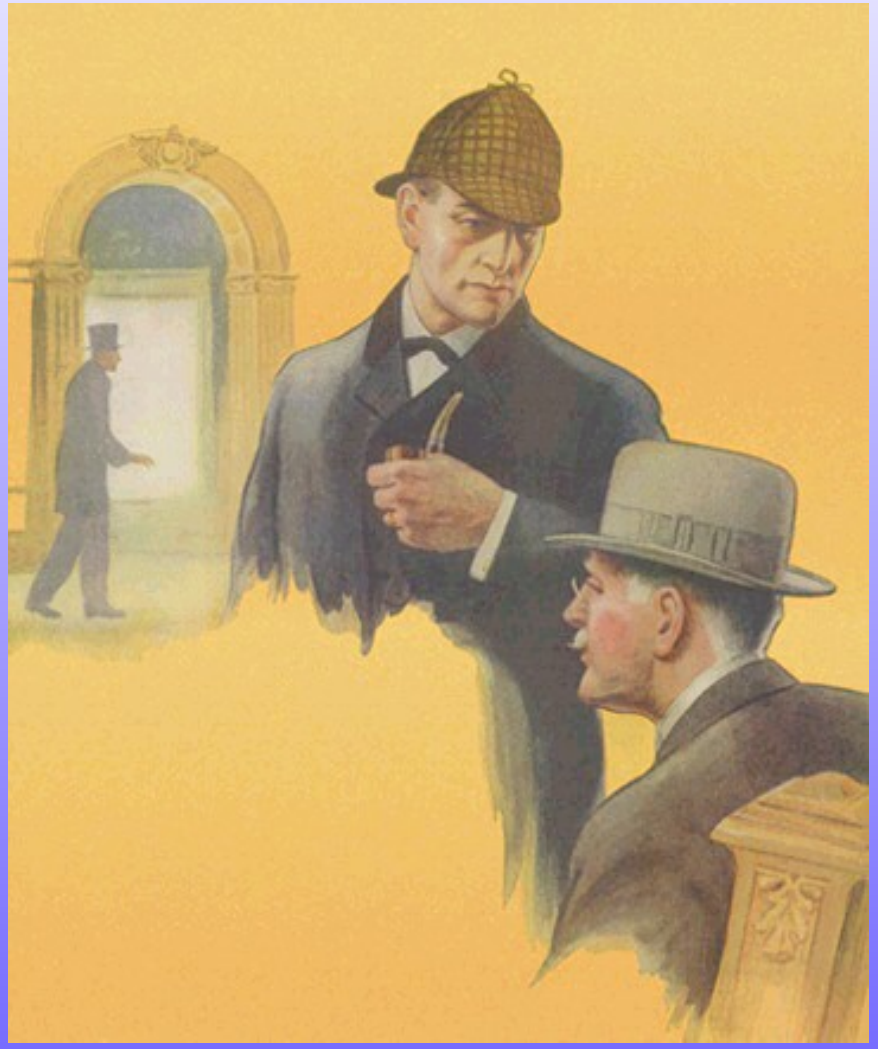
Helpful Hints

How do Identify a Conflict of Interest



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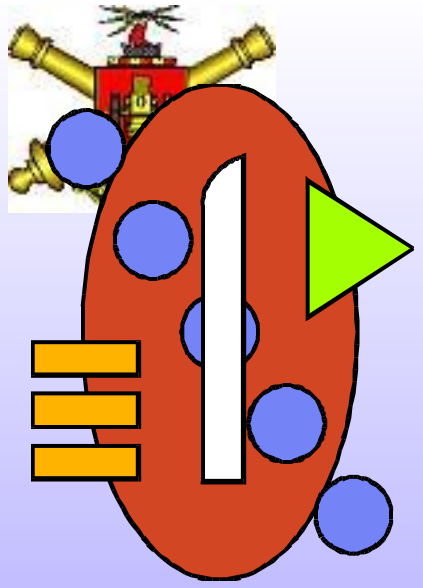

Financial Disclosure Reports

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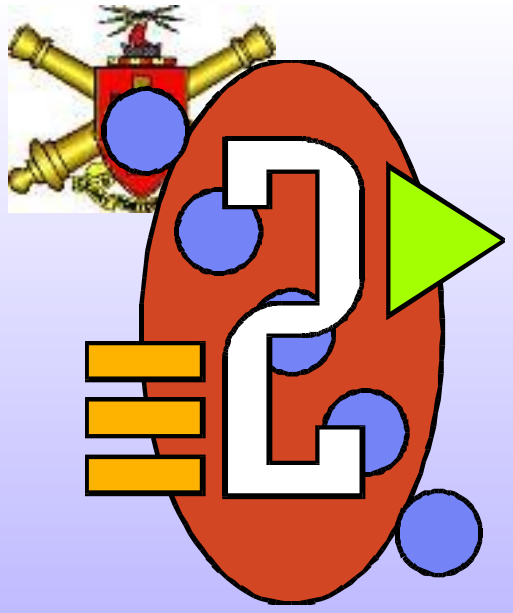

Training (briefings for procurement boards)

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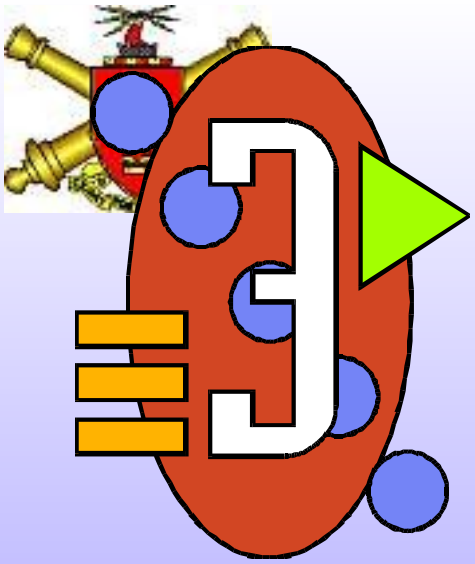

Frequent interaction with supervisors

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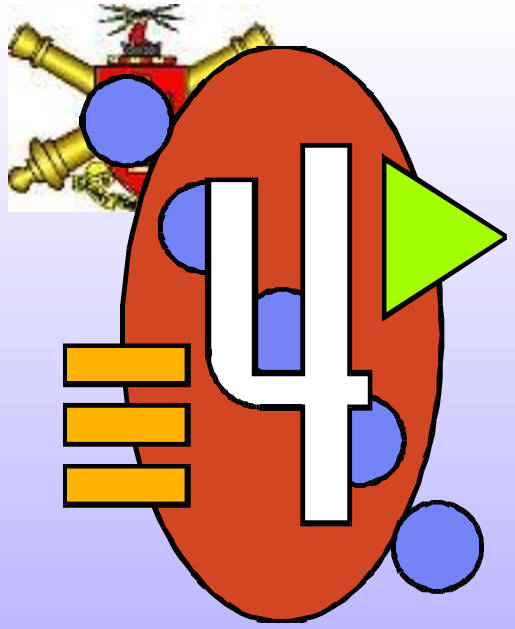

Know your client

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